

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MILDRED F. JONES, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 5:06-cv-00345

SEARS ROEBUCK & CO., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' Motion for Reconsideration [Docket 47] of this Court's Memorandum Opinion and Judgment Order entered March 28, 2007. For the reasons stated herein, the motion is **DENIED**.

In its March 28, 2007 Order, the Court granted Defendants' motion to dismiss Plaintiffs' Complaint. Plaintiffs timely moved for the Court to reconsider its order pursuant to Fed. R. Civ. P. 59(e).

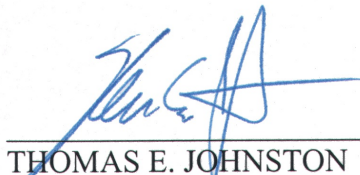
Rule 59(e) provides that "any motion to alter or amend a judgment shall be filed no later than 10 days after entry of judgment." Although Rule 59(e) does not provide a standard for reconsideration motions, the Fourth Circuit has recognized three grounds for amending a previous judgment: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). Motions made pursuant to Rule 59(e) "may not be used, however, to raise arguments which could have been raised prior to the issuance

of the judgment, nor may they be used to argue a case under novel legal theory that the party had the ability to address in the first instance.” *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998). Furthermore, “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Id.*

Upon consideration of Plaintiffs’ motion, they have cited no intervening changes in controlling law. Nor have Plaintiffs brought forward any relevant “new evidence.” Finally, the Court does not find that its Order contains any clear errors of law or is manifestly unjust. At best, Plaintiffs’ motion simply raises new arguments in support of its opposition to Defendants’ motion to dismiss which could have been raised before the Court’s ruling, and which the Court need not address.

Based on the above, the Court **DENIES** Plaintiffs’ Motion for Reconsideration [Docket 47]. The Clerk is directed to send copies of this Order to all counsel of record and any unrepresented party.

ENTER: May 18, 2007



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE